

**Assembly Bill 1980 (Wolk)**  
**Contribution Limits: Candidate-controlled**  
**Ballot Measure Committees**

**Version:** As introduced, February 12, 2004  
**Status:** Assembly Elections Committee

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**Executive Summary**

This bill would impose contribution limits on ballot measure committees controlled by candidates for elective state office. This would be a broader limitation than the one the Commission is considering in Agenda Item #16, which would apply only to expenditures for communications that clearly identify a candidate for elective state office.<sup>1</sup>

Assembly Member Wolk and her staff have requested the Commission's assistance in drafting amendments to this bill that would 1) reduce the likelihood of a successful challenge to its constitutionality and 2) make the bill easier to implement and enforce. To this end, staff has prepared amendments (Attachment 2) which:

- impose a \$21,200 limit on ballot measure committees controlled by elective state office candidates;
- index that amount to CPI similar to other contribution limits under the PRA;
- move an existing trust provision of the Elections Code related to ballot measure funds into the PRA; and
- provide that the General Fund shall bear opposing-parties' attorneys fees and court costs, if ordered by a court, in the event the measure is successfully challenged.

**Recommendation**

Staff recommends that the Commission adopt a position of "support if amended" as provided in the attached draft language.

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**Summary**

As introduced, AB 1980 imposes a contribution limit of \$21,200 on a ballot measure committee controlled by a candidate for elective state office. It also provides that expenditures for communications that clearly identify the controlling candidate may only be made from that portion of the contribution that does not exceed the limit applicable to the candidate. For instance, if a legislator controls a ballot measure committee, that committee may collect \$21,200 from an individual, but may only spend \$3,200 of that amount for a television ad in which the candidate is clearly identified.

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<sup>1</sup> "Elective state office" means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization. (Govt. Code sec. 82024)

The bill also provides, in an amendment to the Elections Code, that expenditures by a ballot measure committee to support the elective state office candidacy of the trustee (controlling candidate) or in opposition to the trustee's opponent, are not in the due and lawful execution of the trust. Violations of this provision are punishable by a fine of up to \$5,000, as a misdemeanor, or a felony, or by a fine and a misdemeanor or a felony.

### **Background**

In the weeks leading up to the gubernatorial recall election last fall, newspaper accounts chronicled Lieutenant Governor Bustamante's control of the "No on Proposition 54" ballot measure committee. This committee paid for advertisements against the ballot measure which featured the Lieutenant Governor. The campaign funds raised by the committee for this purpose were raised in unlimited amounts, with one contributor donating \$478,000 to the effort. Senator Johnson addressed the Commission at its October 2003 meeting advocating an interpretation of Government Code section 85310 that would require expenditures for such advertisements be made from funds limited to \$26,600 per donor.

More recently, Governor Schwarzenegger has collected contributions, in amounts as high as \$250,000, into a general purpose committee he controls known as "Schwarzenegger's California Recovery Team." Moneys from this committee were transferred to the ballot measure committee, "Californians for a Balanced Budget—Yes on 57 and 58." Prior to the March primary election, Senator Johnson renewed his request that the Commission apply contribution limits to ballot measure committees controlled by elective state office candidates.

### **Proposed Amendments**

Staff amendments eliminate the "clearly identified candidate" provision, simplifying the bill to a single \$21,200 limit on ballot measure committees controlled by elective state office candidates. The draft also moves the Elections Code trust provision relative to ballot measure committees into the PRA, and adds civil and administrative enforcement remedies to that provision.

### **Analysis**

The author of AB 1980 has introduced the bill to address what she sees as a disturbing trend of elective state office candidates collecting large contributions into ballot measure committees they control. These contributions, often in amounts many multiples above the candidate's contribution limit, appear to circumvent the intent of those limits--to prevent corruption or the appearance of corruption. Even if these sums are not used to pay for ads that identify the candidate, they represent special interest largesse that undermines the contribution limit scheme.

As presented in pages 3-8 of Item 16 on this month's agenda, the *McConnell* case provides support for the position that limits on issue advocacy may be upheld if applied to protect a constitutionally valid campaign reform scheme. In terms that the *Berkley Rent Control* court employed, while ballot measures may be incorruptible, candidates who may control them may not be.

The amendment proposed by staff to move the ballot measure committee trust provision from the Elections Code to the Political Reform Act is intended to give greater regulation on a subject which the Secretary of State believes is the purview of the Attorney General. By moving this provision to the Government Code, the Attorney General would continue to have the criminal

enforcement authority, but the Commission could provide advice and interpretation to candidates.

One question of interpretation will no doubt arise out of the paragraph the bill adds to the trust provision. That language reads:

Expenditures in support of the trustee's candidacy for elective state office or in opposition to a candidate running for the same elective state office are not within the due and lawful execution of the trust.

This provision could be read to prohibit the candidate who controls a ballot measure committee from appearing in an advertisement paid for with committee funds, at least in instances where the candidate and the measure are on the same ballot.

### ***Staff Concerns***

#### ***Funding for Legal Challenges***

The Commission may want to request language to deal with costs arising from litigation, in the event this enactment is challenged. In *Levine v. Fair Political Practices Commission*, 222 F. Supp. 2d 1182 (E.D. Calif. 2002), for instance, plaintiffs brought a successful motion for preliminary injunction against enforcement of certain statutory provisions regarding slate mailers. Although the Attorney General's Office may be available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorneys fees would be borne by our agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

If this section is successfully challenged and a court awards an opposing party attorneys' fees and costs, those fees and costs shall be paid from the General Fund and the Commission's budget shall not be reduced accordingly.

#### ***Unfunded Costs***

Each time a substantive new provision is added to the Political Reform Act, telephone and written advice requests and enforcement workload increase. It is estimated that these companion bills will give rise to approximately \$100,000 in costs for regulatory implementation, telephone and written advice, and enforcement workload. The Commission is urged to seek reimbursement for these costs, as it is this layering of unfunded new programs that forces the agency to prioritize advice and enforcement workload and, ultimately, to abandon some workload.